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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Marcus Saint John Reece,) No. CV 10-2794-PHX-JAT (ECV)

10 Plaintiff,) **ORDER**

11 vs.)

12 Jennifer G. Brockel, et al.,)

13 Defendants.)

14 _____)

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16 On December 28, 2010, Plaintiff Marcus Saint John Reece, who was confined in the

17 Maricopa County Lower Buckeye Jail at the time, filed a *pro se* Complaint (Doc. 1). The

18 \$350.00 filing fee was paid.

19 By Order filed January 25, 2011 (Doc. 4), the Court dismissed the Complaint without

20 prejudice, with leave to amend, in order for Plaintiff to file an amended complaint on a court-

21 approved form. Plaintiff was given 30 days to submit a first amended complaint on a court-

22 approved form and the Clerk of Court was directed to mail to Plaintiff a court-approved form

23 for filing a civil rights complaint by a prisoner.

24 **I. Failure to Comply With Court Order**

25 To date, Plaintiff has not filed a first amended complaint. Instead, on February 24,

26 2011, Plaintiff filed a pleading entitled "First Amended Notice Of Motion For Summary

27 Judgement In Lieu Of Complaint" (Doc. 5) and another pleading entitled "Plain Statement

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1 Of Facts In Support Of Motion For Summary Judgement” (Doc. 6).

2 In the Court’s Order filed January 25, 2011 (Doc. 4), Plaintiff was informed that his
3 first amended complaint must be retyped or rewritten in its entirety on the court-approved
4 form and may not incorporate any part of the original Complaint by reference. However,
5 Plaintiff has ignored the Court’s directive and not filed a first amended complaint on a court-
6 approved form. Moreover, even if the Court were to construe Plaintiff’s “First Amended
7 Notice Of Motion For Summary Judgement In Lieu Of Complaint” (Doc. 5) as a first
8 amended complaint, it would still not comply with the Court’s Order because it is not on the
9 court-approved complaint form and by and large Plaintiff has done nothing more than re-
10 label his original Complaint as a “First Amended Notice Of Motion For Summary Judgement
11 In Lieu Of Complaint.”

12 **II. Dismissal of Action Without Notice**

13 The Court’s January 25, 2011 Order specifically cautioned Plaintiff that if he failed
14 to timely comply with every provision of the Order, including the warnings, the Court may
15 dismiss this action without further notice. See Ferdik v. Bonzelet, 963 F.2d 1258 (9th Cir.)
16 (a district court may dismiss an action for failure to comply with any order of the Court).
17 The Court’s Order also warned that Plaintiff that if he failed to use the court-approved form,
18 the Court may strike the amended complaint and dismiss this action without further notice
19 to Plaintiff.

20 Because Plaintiff has utterly failed to comply with the Court’s January 25, 2011 Order
21 (Doc. 4), the Court will dismiss this action pursuant to Rule 41(b) of the Federal Rules of
22 Civil Procedure for failure to comply with the Court’s Order and will direct the Clerk of
23 Court to enter judgment accordingly. In light of the dismissal of this action, Plaintiff’s “First
24 Amended Notice Of Motion For Summary Judgement In Lieu Of Complaint” (Doc. 5) will
25 be denied as moot.

26 **IT IS ORDERED:**

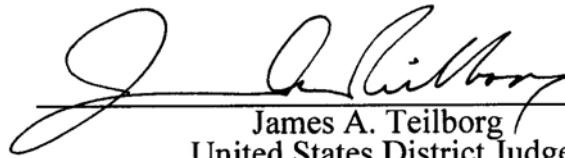
27 (1) Plaintiff’s “First Amended Notice Of Motion For Summary Judgement In Lieu
28 Of Complaint” (Doc. 5) is **denied as moot**.

1 (2) This action is **dismissed without prejudice** pursuant to Rule 41(b) of the
2 Federal Rules of Civil Procedure for failure to comply with the Court's Order filed
3 January 25, 2011 (Doc. 4).

4 (3) The Clerk of Court **must enter judgment** accordingly and **close** this case.

5 (4) The docket **shall reflect** that the Court certifies, pursuant to 28 U.S.C.
6 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of this
7 decision would not be taken in good faith.

8 DATED this 19th day of April, 2011.

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11 James A. Teilborg
12 United States District Judge
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